IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1003 OF 2005

Om Baltapasvi Malinath Maharaj Math & ors..Appellants
Versus
Shri Venkatesh Sharnappa Sakhare & Ors. ..Respondents

Mr.Mahendra Rathod h/f. Bagla Dandekar & Co. for appellants

Mr.Uday Warunjikar for respondent no.1

CORAM : P.V.KAKADE, J.

DATE : 20TH SEPTEMBER, 2005.

P.C.:

1. The appellants have filed this appeal against the judgment and order passed by Addl. District Judge Baramati dated 20th January 2005 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Daund dated 29th March 2004 decreeing the plaintiff’s suit.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff had filed the suit for partition, separate possession of the suit properties and for

perpetual injunction to restrain the defendants from causing any sort of obstruction and disturbances to the plaintiff's possession and cultivation in the suit land. The suit is also filed for declaration of Gift Deed dated 29.12.1992 is not binding upon the plaintiff executed by defendant no.1 in favour of defendant no.2.

. The plaintiff came with the case that the suit property was joint family property and he had 1/3rd share therein. It is held that the defendant no.1 executed Gift deed dated 29.101992 in favour of defendant no.2 and it was not binding upon the plaintiff. The defendants contested the suit on various grounds. The defendant no.2 allegedly contended that the suit property was self acquired of his property and was purchased in the year 1983 and he had every right to Gift the said property to defendant no.2 and as such the Gift Deed was legal and valid. It was admitted by defendant no.1 that the plaintiff had undivided share in the suit property and it was further admitted that the plaintiff and defendant no.1 had purchased the suit property out of joint family income in the year 1983. It is case stood to be made by defendant in his written statement that defendant no.1's brother Subhash told him

that the suit land was to be given to the Government for plantation for tree and so he obtained his signature on stamp paper. Later on he came to know that the defendant no.2 got executed the Gift Deed of the suit property in his favour by playing fraud upon him. The defendant no.2 being his real brother he believed in him and signed on the blank papers and he had no intention to execute the Gift Deed. The defendant no.4 on his part admitted that the plaintiff's claim by filing his written statement. The defendant no.3 resisted the plaintiff's suit contending that defendant nos.1 and 2 were doing the partnership business and out of their own earning they have purchased the suit property and defendant nos.1 and 2 have gifted the suit property on 29.10.1992 and 30.10.1992 by way of Gift Deed. Prior to the Gift Deed the land were not under the cultivation and defendant no.1 had executed Gift Deed voluntarily in favour of defendant no.2 for the "Bal Tapasvi Mallinath Maharaj Math". According to the defendant no.3, the defendant nos.1 and 4 are taking undue advantage of death of defendant no.2 and on such and other grounds the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute

on merits and came to the conclusion that the plaintiff had proved that the suit property was joint family property and plaintiff had 1/3rd share therein. It was further proved that the Gift Deed dated 29.10.1992 executed in between defendant nos.1 and 2 was not binding upon his share and plaintiff had also proved that the defendant no.2 was causing obstruction and disturbance to his possession and cultivation in the suit property and he was entitled for perpetual injunction also. It was held that the defendant no.1 failed to prove that the suit property was his self acquired property. On such and other grounds the suit came to be decreed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties concurred with the findings recorded by the trial court and dismissed the appeal. Hence the present appeal.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. Initially it must be noted that I have perused the record, which clearly shows that the arguments today advanced on behalf of the appellant are contrary to the very pleadings of the defendants because

defendant no.1, who has executed the Gift Deed, has categorically stated in his written statement that the property is a joint family property as it was purchased from joint nucleus in the year 1983 and his signature was obtained by defendant no.2 by fraud on the Gift deed. In view of this position, question does not arise whether the gift deed gives any right to the said Math, who is in possession of the said property. The learned counsel for the appellant also submitted that the Gift Deed was of the year 1992 and the suit was filed on 13.6.2002 and therefore, the suit is unduly delayed and therefore, cannot be entertained. However, in this regard it must be noted that the trial court did raise issue regarding limitation and came to the conclusion that the suit was within limitation. The lower appellate court has also endorsed to the said findings of the trial court and therefore, there is no dispute whatsoever that the suit is within limitation.

5. Apart from this aspect, I am satisfied that both the courts below have appreciated the entire evidence in proper perspective and on the basis of available evidence and therefore, I have no hesitation to hold that the appeal has no merits and as such stands

dismissed with no order as to costs.